

Section III:
AMENDMENT UNDER 37 CFR §1.121 to the
DRAWINGS

No amendments or changes to the Drawings are proposed.

Section IV:
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Incorporation of Appeal Brief Arguments

The arguments presented by the Appellant in the Appeal Brief filed on July 13, 2007, in response to the Office Action dated April 18, 2007, are incorporated into this reply and amendment.

Multiple Examiner's Answers

Applicant has received two Examiner's Answers, one mailed on October 18, 2007, and another mailed on November 20, 2007. There is no notification in the second Examiner's Answer regarding why it was mailed or what is different about it.

Upon review, Applicant believes that no new arguments or grounds were presented in the second Examiner's Answer, but that it was corrected regarding form (section 2 Related Appeals and Interferences was missing). If this is incorrect, Applicant respectfully requests clarification regarding any substantive differences between the two Examiner's Answers so that a response may be made.

Request for Continued Examination and Amendment

In the Examiner's Answer, it appears that the primary point of disagreement between Applicant and the Examiner centers on the precision of language in the claim and disclosure regarding where the consumer identification unit is mounted. Both the claims and the disclosure recite "mounted on or near a retail display fixture".

Applicant has argued that this phrase means "mounted on or mounted near a retail display fixture". Examiner has argued that a consumer identification unit mounted on a shopping cart which can be pushed into a position near a retail display fixture meets this criteria, and thus the claims read upon the cited art. In response, Applicant has argued that such a cart-mounted unit is not the same as a retail fixture-mounted unit. Examiner has responded that Applicant has also disclosed, and appears to want to claim, units which are mounted on a ceiling nearby the retail display fixture. Applicant agrees that this was the intention of the "or near" portion of the

phrase in question.

Applicant presents the attached amendment to recite language which more precisely describes the mechanical and physical relationships of the components of the invention. Applicant wishes to express claim steps, elements, and limitations where the consumer identification unit and the retail fixture are relatively immobile to the shopper who approaches the fixture and unit, whereas the cited art has the shopper and the unit traveling together (e.g. the consumer unit is mobile relative to the fixture).

So, the present amendment revises the language to recite a "retail fixture" (see paras. 0005, 0028, etc. for antecedent basis), in which a "fixture" is "fixed in place":

Dictionary: **fixture** *n.* 1. Something securely fixed in place.

Source: *The American Heritage® Dictionary of the English Language*, Fourth Edition. Retrieved December 18, 2007, from [Dictionary.com](http://dictionary.reference.com/browse/fixture) website: <http://dictionary.reference.com/browse/fixture>

The amendment also removes the "mounted on or near" phrase, and recites instead that the retail fixture is "equipped" (see paras. 0023, 0033 for antecedent basis) with a consumer identification unit, where the term "equipped" is used to mean that the retail fixture is "provided with", "furnished with", or "fitted out" with the consumer identification unit:

Dictionary: **equipped** *adj.* 1. To supply with necessities such as tools or provisions. 2. To furnish with the qualities necessary for performance: an education that will equip you to handle such problems. See Synonyms at [furnish](#).

Source: *The American Heritage® Dictionary of the English Language*, Fourth Edition. Retrieved December 18, 2007, from [Dictionary.com](http://dictionary.reference.com/browse/equipped) website: <http://dictionary.reference.com/browse/equipped>

Dictionary: **equipped** *adj.* 1. provided or fitted out with what is necessary or useful or appropriate; "a well equipped playground"; "a ship equipped with every mechanical aid to navigation" [ant: unequipped]

Source: *WordNet® 3.0.*, retrieved December 18, 2007, from [Dictionary.com](http://dictionary.reference.com/browse/equipped) website: <http://dictionary.reference.com/browse/equipped>

As such, a retail fixture is "fixed in place", and its "equipment" is also "fixed in place". Thus the pair – the fixture and the consumer identification unit – are fixed together in place. This is comprehensive in scope for consumer identification units mounted on the fixture, under the fixture, or on the ceiling above the fixture (e.g. ceilings are also "fixed" in place).

The cited art shows a consumer identification unit which is not equipped to a fixture, and which is not fixed in place. A shopping cart is not considered a retail fixture or a display fixture.

To further emphasize this physical and motion relationship of the invention, the phrase "responsive to ..." has been amended to recite that the consumer moves from outside the proximity to inside the proximity of the consumer identification unit (see para. 0034 for antecedent basis). The cited art shows a consumer who travels within the proximity of the consumer identification unit because it is mounted to a cart which is kept near the shopper.

Applicant submits that the present amendment precisely claims that the consumer identification unit and the retail fixture are both fixed in place, and that the shopper/user moves towards the pair to trigger the identification process and the ensuing steps to find and indicate products on the fixture which meet the shopper's preferences. The cited art shows a shopper traveling with a mobile consumer identification unit, and is silent regarding equipping the fixture with the consumer identification unit and indicating matching products responsive to the approach of the shopper.

Applicant respectfully requests reconsideration and allowance of the claims.

Request for Indication of Allowable Subject Matter

Applicant believes the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, Applicant respectfully requests constructive recommendations per MPEP 707.07(j) II which would, in the Examiner's opinion, place the claims in condition for allowable condition without need for further proceedings.

Response to the Examiner's Answers

For completeness, the following remarks are made by Applicant in response to the Examiner's Answers dated Oct. 18, 2007, and November 20, 2007. The following remarks are directed towards the claims as presented on Appeal, and are also applicable in view of the present amendment.

On page 5 of the Examiner's Answer, the Examiner responded to Applicant's argument that the claim term, phrase or limitation "mounted on or near" was incorrectly being interpreted as "mounted on or *being* near". The Examiner noted that it is believed support for such a broad interpretation is found specifically at paragraphs [0028] and [0029].

Applicant respectfully disagrees. In fact, these two paragraphs use the exact same language "mounted on or near" as recited in the claim (emphasis added by Applicant):

[0028] According to the preferred embodiment, the display unit indicators (44) are high-intensity light emitting diodes (LEDs) **mounted (73) on or near** display accessories for the display fixture, as shown in FIGURE 7. These LED's are driven by wires connected to the consumer identifier unit (42). In one enhanced embodiment, the display unit indicators may be alphanumeric displays, such as liquid crystal displays (LCD), so that detailed information may be displayed. In an even more advanced embodiment, a computer-driven projector such as those commonly used for making presentations may be mounted above the display fixture such that images may be projected onto or around the displayed product samples which match the consumer's preferences.

[0029] The consumer identifier unit (42) may be **mounted on the front or underneath the surface** of the display fixture itself, or alternatively in a nearby fixture or even on the ceiling above the fixture. Wires or leads to the indicators may be concealed under the surface of the display fixture or covered with a cloth or other decorative product.

Applicant respectfully submits that the claim language and the description language are improperly interpreted by the Examiner.

Regarding the first phrase "mounted (73) on or near display accessories" consists of an adjective "mounted" followed by two prepositions, "on" and "near", with an a conjunction "or". In other words, the conjunction provides a more concise means for stating "mounted on display

accessories or mounted near display accessories". This interpretation requires addition or implication only of the adjective "mounted" and prepositional object "display accessories" which are already present in the claim and in the disclosure. It is grammatically proper and reasonable to associate the two prepositions with the single adjective in the alternative. This interpretation is consistent with Applicant's original disclosure of the process of the invention and product fixture being approached as a pair by the consumer, whereas the cited art has the product fixture being approached by the consumer and the identifier traveling with the consumer (e.g. the identifier unit and the consumer move together as a pair).

It is grammatically incorrect to interpret the phrase as meaning "mounted on or <being> near . . ." because this inserts or implies an adjective which is not actually in the phrase or disclosure. The phrase "being near" does not appear in the disclosure or claims. In the Examiner's interpretation, the preposition "near" would be associated with the non-existent adjective "being". This is an unreasonable interpretation, is grammatically incorrect, reads the cited art into the claims and into the disclosure, and is inconsistent with the process described in the disclosure of the product fixture and invention being approached by the user. The claims must be interpreted in light of the specification because the claims are part of the specification. Further, the claims must be interpreted according to correct grammatical and syntactical rules of written English. A reasonable person of ordinary skill in the art would not interpret this phrase as proposed by the Examiner in the context of the Applicant's specification.

Regarding the second phrase (paragraph [0029]), "mounted on the front or underneath the surface", a similar grammatical analysis reveals the same structure – an adjective "mounted" modified or limited by two preposition phrases "on the front" and "underneath the surface" related by a conjunction "or". It is grammatically proper and reasonable to associate the two prepositional phrases with the single adjective in the alternative. This interpretation is also consistent with Applicant's original disclosure of the process of the invention and product fixture being approached as a pair by the consumer, whereas the cited art has the product fixture being approached by the consumer and the identifier traveling with the consumer (e.g. the identifier unit and the consumer move together as a pair). It is improper grammar, and inconsistent with Applicant's disclosure, to interpret this phrase as proposed by the Examiner as meaning "mounted on the front or <being> underneath the surface . . ." because the adjective "being" does not appear in the claim, nor does the phrase "being underneath" appear in the disclosure. The Examiner's interpretation is an unreasonable interpretation, is grammatically incorrect, reads

the cited art into the claims and into the disclosure, and is inconsistent with the process described in the disclosure of the product fixture and invention being approached by the user. The claims must be interpreted in light of the specification because the claims are part of the specification. Further, the claims must be interpreted according to correct grammatical and syntactical rules of written English. A reasonable person of ordinary skill in the art would not interpret this phrase as proposed by the Examiner in the context of the Applicant's specification.

On page 5 of the Examiner's Answer it is stated that "[t]he examiner notes the Applicants arguments are directed towards a limitation that is narrower than the actual claim language". This is incorrect. The Applicant is merely wishing for the words present in the claim, and *only* the words present in the claim, to be examined. It is improper to broaden a claim by implying or inserting words which do not exist in the claim, or which would be unreasonable to be read into the claim by one of ordinary skill in the context of the specification.

As the Examiner has stated, "[t]herefore, if the consumer ID is mounted on a shopping cart as taught in Geiger, this falls within in the light of the specification as disclosed by the Applicant". Applicant is unclear what "falls within in the light of the specification" means. But, reasonable interpretation of the *claims* according to proper English grammar and syntax, and in view of the specification, does not support interpretation of the claims in a manner which reads upon mounting of the consumer ID onto a shopping cart because this would not be "mounted on a display fixture" or "mounted near a display fixture".

If the Examiner's argument is that "mounted on a cart which is near" is within the scope of the claim language, Applicant respectfully disagrees. The claim must be considered as a whole, and not piecemeal. There is no recitation of a cart in the claim, and thus it would be unreasonable to read such an element into Applicant's claims. One of ordinary skill in the art would consider the rest of the claim in which it is clear that the consumer is moving towards the identification unit and towards the retail display, thus the retail display and identification unit as a pair are being approached by the consumer. In an arrangement with the identification unit mounted to the cart which then approaches the retail display fixture, the identification unit would be moving with the consumer, and thus the consumer would not be approaching the identification unit as claimed ("responsive to a consumer moving into the proximity of a retail display fixture electronically establishing an identity of the consumer by a consumer identification unit mounted on or near said retail display fixture").

On page 6 of the Examiner's answer, the examiner stated (emphasis added by Applicant):

"[a]ppellants disclosure teaches the mounts on the ceiling of a stores as well a near by fixture, therefore, the mounting on a shopping cart in a nearby fixture and in some cases closer than a store ceiling to a display fixture."

Applicant is unclear as to what "the mounts on the ceiling" means. It is not grammatically complete.

Applicant is also unclear what "the mounting on a shopping cart in a nearby fixture" means. Shopping carts are not mounted in nearby fixtures. A "fixture" by its nature is relatively "fixed" in position (e.g. a shelf, table, rack, etc.), while a shopping cart is relatively mobile (e.g. having wheels or a carry handle). There is no art on record of mounting shopping carts to retail product display fixtures, thus the Examiner's argument is unclear.

Applicant has disclosed and claimed mounting of a portion of *the invention* on a ceiling near or above the associated display fixture (para. 0029). However, because ceilings do not move relative to the display fixture, and in light of the specification disclosing the process of the consumer moving towards the pair of the display and invention, the claims do not read on the cited art because the cited art discloses the invention coupled to the shopping cart moving together with the consumer towards the display fixture.

With respect to the Examiner's response regarding negative claiming on page 6 of the Examiner's Answer, Applicant points out that the Examiner has apparently agreed that "the claim language as written when give a broad reasonable interpretation". Applicant respectfully submits that the claim is not being examined and interpreted "as written", but instead is being impliedly modified in order that it may read upon the cited art. Implying words or phrases which do not exist is not merely affording broad interpretation of the claims *as written*, but instead is modifying the claims to be broader than written. Further, the implied modifications to the claim are not reasonable in light of the specification, of which the claims are a part, and in the context of which one of ordinary skill would read the claims.

With respect to the Examiner's response to Applicant's arguments using terminology such as "static" reminding the Applicant that if such were wished to be examined it should be amended into the claims, and that such "expounding" arguments do not limit the claims, Applicant respectfully disagrees. Applicant wishes for the claims to be examined as written. Neither the Applicant nor the Examiner are allowed to add words to the claims without amendment. The claims *as currently written* are sufficient in their wording to be supported by

the specification and to distinguish over the cited art.

With respect to the Examiner's proposed "examples" of operation on Page 7, Applicant is unclear as to the intended meaning an argumentative weight of the Examiner's statements, possibly due to typographical errors. The Examiner seems to state that Applicant's argument regarding intended use holds no patentable weight, but then proceeds to offer her own example of intended use. The Examiner's example appears mis-worded as it states that a consumer who is physically separated from the identifying device would somehow still be alerted by a product display (emphasis added by Applicant):

"The examiner also gives **an example, also intended use**, in which **Appellants system would not work**. If a consumer is shopping and has their RFID card in their purse and/or cart and walks away from the cart **without a the purse towards a retail display** the consumer **will be** alerted of preferences on that display they are near because either one or both the cart and/or purse are not near the retail display to identify the consumer.

The Examiner prefaces her example by stating that it is one of intended use. Are examples of intended use dispositive value in the argument or not? If so, then Applicant's argument using an intended use must be considered. Next, the Examiner states that in this proposed example, the Applicant's system would not work. But, then, the Examiner concludes that the consumer "will be alerted" as if the proposed arrangement would work.

Applicant believes that the Examiner intended to state that the Applicant's system would not work in the scenario where the ID device was left in a purse, wallet or on the cart, when the consumer approaches a display case. Of course it would not work, nor would the cited art (which requires the abandoned cart to be near the retail display). But, it is unclear how this scenario is relevant to the claim, whereas the claim language specifies that the ID device (e.g. an RFID card) is present with the consumer for operation.

With respect to the Examiner's response regarding Claims 2, 3, 12, 13, 15, 22, 23, and 25 Applicant respectfully disagrees. The cited art fails to teach all of the claim steps, elements, and limitations from which these claims depend, and therefore they are patentably distinct over the cited art.

With respect to the Examiner's response regarding Claims 4, 14, and 24, Applicant respectfully disagrees. The cited art fails to teach all of the claim steps, elements, and limitations from which these claims depend, and therefore they are patentably distinct over the cited art. It is unclear what "the prefer discounts" means in the Examiner's arguments. And, the Examiner has argued that price information sent to the user is "non-functional descriptive material", but no such rejection has been made of these claims.

With respect to the Examiner's response regarding Claims 10, 20, and 30, Applicant respectfully disagrees. The cited art fails to teach all of the claim steps, elements, and limitations from which these claims depend, and therefore they are patentably distinct over the cited art. It is unclear what "fails to teach" and "The examiner the appellant is merely" means in the Examiner's arguments.

With respect to the Examiner's response regarding Claims 6 - 9, 16 - 19, and 26 - 29, as being obvious under 35 U.S.C. §103(a), Appellant respectfully disagrees. The cited art fails to teach all of the claim steps, elements, and limitations from which these claims depend, and therefore they are patentably distinct over the cited art. This is an incorrect paraphrasing of Appellant's argument. The Examiner, not the Appellant, noted in the final Office Action that Geiger fails to teach sending an email, but then reasoned that in view of Geiger's "direct marketing" disclosure, it would have been obvious to extend and modify Geiger's "direct marketing" to mean "electronic address" and then to mean sending of emails. Appellant was arguing that such two-phased logical extension to reinterpret and broaden the cited art is unreasonable for those ordinarily skilled in the art.

For the foregoing reasons, and in view of the present amendment, Applicant requests allowance of the pending claims.

Respectfully,

A handwritten signature in black ink that reads "Robert Frantz". The signature is written in a cursive, flowing style with a large, stylized "R" and "F".

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